



***Substitute House Bill No. 6849***

***Public Act No. 05-154***

***AN ACT CONCERNING THE APPOINTMENT AND DUTIES OF  
TEMPORARY CONSERVATORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 45a-654 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Upon written application for appointment of a temporary conservator brought by any person deemed by the court to have sufficient interest in the welfare of the respondent, including, but not limited to, the spouse or any relative of the respondent, the first selectman, chief executive officer or head of the department of welfare of the town of residence or domicile of any respondent, the Commissioner of Social Services, the board of directors of any charitable organization, as defined in section 21a-190a, or the chief administrative officer of any nonprofit hospital or such officer's designee, the Court of Probate may appoint a temporary conservator [.] if [it] the court finds that: (1) The respondent is incapable of managing his or her affairs or incapable of caring for himself or herself, and (2) immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent will result if a temporary conservator is not appointed pursuant to this section. The court may, in its discretion, require the temporary conservator to give

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a probate bond. The court shall limit the duties, responsibilities and powers of the temporary conservator to the circumstances that gave rise to the application and shall make specific findings to justify such limitation. In making such findings, the court shall consider the present and previously expressed wishes of the respondent, the abilities of the respondent, any prior appointment of an attorney-in-fact, health care agent, trustee or other fiduciary acting on behalf of the respondent, any support service otherwise available to the respondent and any other relevant evidence. The temporary conservator shall have charge of the property or of the person of the respondent or both for such period of time or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than thirty days, unless at any time while the appointment of a temporary conservator is in effect, an application is filed for appointment of a conservator of the person or estate under section 45a-650. The court may (A) extend the appointment of the temporary conservator until the disposition of such application under section 45a-650, or for an additional thirty days, whichever occurs first, or (B) terminate the appointment of a temporary conservator upon a showing that the circumstances that gave rise to the application for appointment of a temporary conservator no longer exist.

(b) Except as provided in subsection (e) of this section, an appointment of a temporary conservator shall not be made unless a report is presented to the judge, signed by a physician licensed to practice medicine or surgery in this state, stating: (1) That the physician has examined the respondent and the date of such examination, which shall not be more than three days prior to the date of presentation to the judge; (2) that it is the opinion of the physician that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself; and (3) the reasons for such opinion. Any physician's report filed with the court pursuant to this subsection shall be confidential. The court may issue an order for the

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disclosure of the medical information required pursuant to this subsection.

(c) [The] (1) If the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent as required in subsection (d) of this section would cause immediate and irreparable injury to the mental or physical health or financial or legal affairs of the respondent, the court may, ex parte and without prior notice to the respondent, appoint a temporary conservator upon making the findings required [by] in subsection (a) of this section, provided the court makes a specific finding in any decree issued on the application stating the immediate or irreparable injury that formed the basis for the court's determination and why such hearing and appointment was not required.

(2) After making such ex parte appointment, the court shall immediately: [(1)] (A) Appoint an attorney to represent the respondent, provided if the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be established by, and paid from funds appropriated to, the Judicial Department, [however,] except that if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund; [and (2)] (B) schedule the date, place and time of a hearing to be held not later than seventy-two hours after the issuance of the court's decree, excluding Saturdays, Sundays and holidays; and (C) give notice by mail, or such other notice as the court deems appropriate, to the respondent, the respondent's next of kin and such attorney, which notice shall include: [(A)] (i) A copy of the application for appointment of temporary conservator and the accompanying physician's report; [and (B)] (ii) a copy of the decree appointing a temporary conservator; [ If] and (iii) the date, place and time of the hearing scheduled

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pursuant to subparagraph (B) of this subdivision, except that if the court determines that notice to the respondent under this [subsection] subdivision would be detrimental to the health or welfare of the respondent, the court may give such notice only to the respondent's next of kin and the respondent's attorney. [Thereafter, the court shall, upon the written request of the respondent, the respondent's next of kin or the respondent's attorney, or may upon its own motion, hold a hearing. Such hearing shall be held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and holidays, and upon such notice as the court deems appropriate.]

(3) After such hearing, the court [may] shall confirm or revoke the appointment of the temporary conservator or may modify the duties, responsibilities or powers assigned under such appointment.

(d) If the court determines that an ex parte appointment of a temporary conservator pursuant to subsection (c) of this section is not appropriate but finds substantial evidence that appointment of a temporary conservator may be necessary, the court shall hold a hearing on the application. Unless continued by the court for cause, such hearing shall be held [within] not later than seventy-two hours [of] after receipt of the application, excluding Saturdays, Sundays and holidays. Prior to such hearing, the court shall appoint an attorney to represent the respondent in accordance with subsection (c) of this section and shall give such notice as it deems appropriate to the respondent, the respondent's next of kin and such attorney, which notice shall include a copy of the application for appointment of a temporary conservator and the accompanying physician's report. After hearing and upon making the findings required [by] in subsection (a) of this section, the court may appoint a temporary conservator.

(e) The court may waive the medical evidence requirement under subsection (b) of this section if the court finds that the evidence is

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impossible to obtain because of the refusal of the respondent to be examined by a physician. In any such case the court may, in lieu of medical evidence, accept other competent evidence. In any case in which the court waives the requirement of medical evidence as provided in this subsection, the court shall (1) make a specific finding in any decree issued on the application stating why medical evidence was not required, and (2) [if a hearing has not been held,] schedule a hearing [under] in accordance with subsection (c) or (d) of this section, which hearing shall take place [within] not later than seventy-two hours [of] after the issuance of the court's decree.

(f) Except as provided in subsection (g) of this section, a temporary conservator may not change the respondent's residence unless a court specifically finds, after a hearing, that such change is necessary.

(g) (1) If the temporary conservator determines it is necessary to cause the respondent to be placed in an institution for long-term care, the temporary conservator may make such placement after the temporary conservator files a report of such intended placement with the probate court that appointed the temporary conservator, except that if the placement results from the respondent's discharge from a hospital or if irreparable injury to the mental or physical health or financial or legal affairs of the respondent would result from filing the report before making such placement, the temporary conservator shall make the placement before filing the report provided the temporary conservator (A) files the report not later than five days after making such placement, and (B) includes in the report a statement as to the hospital discharge or a description of the irreparable injury that the placement averted.

(2) The report shall set forth the basis for the temporary conservator's determination, what community resources have been considered to avoid the placement, and the reasons why the

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respondent's physical, mental and psychosocial needs cannot be met in a less restrictive and more integrated setting. Such community resources include, but are not limited to, resources provided by the area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, any center for independent living, as defined in section 17b-613, any residential care home or any congregate or subsidized housing. The temporary conservator shall give notice of the placement and a copy of such report to the respondent and any other interested parties as determined by the court.

(3) Upon the request of the respondent or such interested party, the court shall hold a hearing on the report and placement not later than thirty days after the date of the request. The court may also, in its discretion, hold a hearing on the report and placement in any case where no request is made for a hearing. If the court, after such hearing, determines that the respondent's physical, mental and psychosocial needs can be met in a less restrictive and more integrated setting within the limitations of the resources available to the respondent, either through the respondent's own estate or through private or public assistance, the court shall order that the respondent be placed and maintained in such setting.

(4) For purposes of this subsection, an "institution for long-term care" means a facility that has been federally certified as a skilled nursing facility or intermediate care facility.

[(f)] (h) [On] Upon the termination of the temporary conservatorship, the temporary conservator shall file a written report with the court of his or her actions as temporary conservator.

Sec. 2. Subsection (c) of section 45a-644 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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*October 1, 2005*):

(c) "Incapable of caring for one's self" or "incapable of caring for himself or herself" means a mental, emotional or physical condition resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health.

Approved June 24, 2005